IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:30.11.2006

CORAM:

THE HON'BLE MR.JUSTICE M.CHOCKALINGAM

S.A.NO.1612 OF 2000

Saraswathi ..Appellant(Plaintiff)

Vs.

1.Yasodhammal
2.Kamalammal ..Respondents (Defendants)

This Second Appeal is filed against the Judgment and decree of the Court of the Principal Sub Judge,Chengalpattu in A.S.No.19 of 1999 dated 18.7.2000 in confirming the judgment and decree of the Court of the District Munsif, Chengalpattu in O.S.No.217 of 1992 dated 28.8.1999.

For Appellant: Mr.V.Raghavachari
For Respondents: Mr.P.Veeraraghavan

J U D G M E N T

Aggrieved over the Judgment made by the Principal Sub Judge, Chengalpattu in A.S.No.19 of 1999 in affiriming the order of dismissal of the suit filed by the appellant, before the learned District Munsif,Chengalpattu in O.S.No.217 of 1992 , the plaintiff has brought forth this second appeal.

2. The plaintiff filed the suit alleging that the suit property is a thatched hut described in 'B' schedule property. The 'A' schedule property is shown as 'ABCD' and 'B' schedule property is shown as 'EFGH' under the plaint plan. 'A' schedule property is a vacant site and 'B' schedule property is a thatched hut with mud wall measuring east to west 27' and south to north 16' with electric service connection No.118. Apart from 'A' and 'B' schedule properties, under the sale deed, a right of passage on the eastern side was also given to the plaintiff.

3. The suit property was puchased by the plaintiff from one Munusamy, the husband of the 2nd defendant under a registered sale deed dt.22.8.88 and from the time of purchase, the plaintiff was in continuous possession and enjoyment of the suit property. While the

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matter stood thus, the second defendant sold the rest of the property to the first defendant and the first defendant is making unlawful attempt of encorachment over the plaintiff's property. Hence the suit.

4. The suit was contested by the defendants stating that it is true that the plaintiff purchased 3 cents from the the said Munusamy, the husband of the second defendant. But 3 cents of land is only situated on the northen portion of the total extent of 11 cents owned by Munusamy and the first defendant purchased the site of an extent of 0.05 cents from the second defendant under a registered sale deed and the rest of the property had been retained by the second defendant .Thus, except 3 cents situated on the north, which is mentioned only the 'A' schedule in the plaint, the plaintiff cannot claim any right or interest over any part of the property situated on the south in the 8 cents of land in which 'B' schedule property is situated.Apart from that, pursuant to the sale, the first defendant is in possession and the electric service connection stands in the name of the 2nd defendant's husband and the consumption charges were also made by the first defendant. Thus, it is nothing but a false claim made by the plaintiff and hence it has got to be rejected by the Court.

5. The trial court after framing necessary issues, tried the suit and dismissed the same. Aggrieved plaintiff took it on appeal, which also met with the same fate. Hence, the second appeal at the instance of the plaintiff.

6. What was contended by the learned counsel for the appellant at the stage of admission is that the Courts below have clearly considered the description of properties as found in Ex.A1, a registered sale deed which was originally owned by Munusamy, the husband of the second defendant and sold to the plaintiff by a registered sale deed dated 22.8.1988 wherein not only 'A' schedule property, but also the thatched hut situated in 'B' schedule property is also clearly mentioned. Apart from that, the right of passage on the eastern side is also mentioned along with the service connection also,but both the Courts have not taken into consideation about this aspect. The learned counsel for the appellant would further add that the purchase was made by the plaintiff in the year 1988 by a registered sale deed and since the property under the 'B' schedule property was conveyed by the said Munusamy in favour of the plaintiff, the first defendant has got any iota of evidence to show that she is in possession of B schedule property or anybody else. Even assuming, the sale deed was made by the second defendant, the wife of Munusamy in favour of first defendant, it will not be valid. Apart from that, the possession has been continuously with the plaintiff and which is also lawful possession, pursuant to the sale deed, the Courts below should have granted the relief as prayed for. Hence, the second appeal has got to be admitted and enquied into.

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7. Since the first defendant was absent and set-exparte, the suit was dismissed in so far as the first defendant is concerned. In so far as the second defendant is concerned, the Court heard the contentions put forth by the learned counsel for the second defendant.

8. The short point which arose for consideration before the Courts below was that whether the plaintiff was entitled to the B schedule of property under sale deed in Ex.A1 along with the electric service connection and right of passage on the eastern side of the property.

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9. Both the Courts have pointed out inter alia that it is true that the plaintiff has purchased the property with the area of 3 cents out of 11 cents owned by one Munusamy, and the rest of the property has been conveyed by the second defendant in favour of first defendant and the first defendant has got into possession and she has been in possession and thus the B schedule property does not form part of A schedule property and what was conveyed to the plaintiff by the said Munusamy was only A schedule property and she has not proved the possession of the B schedule property . Under such circumstances, no relief of injunction could be granted. Though the title itself is denied, relief of injunction prayed for cannot be granted. Hence, the plaintiff should have amended ther prayer seeking declaratory relief, but it is not done so. The plaitniff proceeded for the relief of permanent injunction simplicitor.Therefore, the Court is of the considered opinion that since both the Courts have concurrently found that the plaintiff is not in possession of the B schedule property, no question of granting permanent injunction would arise atthis stage. In the instant case, regarding the concurrent finding that plaintiff is not in possession of the B schedule property, on that short ground, the plaintiff must fail.

10. When the second appal was taken up for admission, learned counsel for the appellant would submit that the appellant may be given opportunity to seek appropriate relief before the appropriate forum.Under such circumstances, this Court is of the considered opinion that the second appeal doesnot require any admission, since no question of law much less substantial question of law would arise

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for consideration. The second appeal is therefore dismissed with liberty to the appellant to move the appropriate forum for the appropriate relief, if so advised.

VJY

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To

1.The Principal Sub Judge, Chengalpattu

2.District Munaif, Chengalpattu.

1 CC TO MR.P. VEERARAGHAVAN, ADVOCATE SR 59198

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MDR(CO)

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